IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.191 OF 2006

Mr.Sudhir K. Thackersey — Petitioner
vs.
State of Maharashtra & ors. — Respondents

ALONG WITH
WRIT PETITION NO. 1635 OF 2005

Mr.Sudhir K. Thackersey — Petitioner
vs.
State of Maharashtra & ors. — Respondents

WITH
WRIT PETITION NO.1540 OF 2005

Mr.Rusi S. Peddar — Petitioner
vs.
The State of Maharashtra & ors. — Respondents

WITH
WRIT PETITION NO.1823 OF 2005

Mr.Chandrahas K. Thackersey — Petitioner
vs.
State of Maharashtra & ors. — Respondents

AND WITH
WRIT PETITION NO.1858 OF 2005

Mr.Chandrahas K. Thakersey — Petitioner
vs.
State of Maharashtra & ors. — Respondents

Mr.M.S.Doctor with Ms.S.Joshi i/b.M/s.Hariani & Co. for the petitioners.

Mr.Milind More, A.G.P. with Mrs.S.M.Dandekar, A.G.P. for respondents 1 and 2.

Ms.Sonali Humane with Mr.S.S.Pakale & Mr.Y.R.Mishra for the respondent no.3.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 19th August, 2006

P.C.

. The petitioners have challenged the demand notices dated 15th March, 2005 issued by respondents 1 and 2 through the Tahsildar, under Section 267 of the Maharashtra Land Revenue Code, 1966 (for short, "the Code") and thereby demanded payment of foreign trade penalty as contemplated under the Foreign Trade (Development and Regulation) Act, 1992 (for short, "the Foreign Trade Act") within 20 days. The consequences of the non-payment were also mentioned.

2. By an order dated 23rd June, 2005 this Court has issued notices and stayed the operation of the impugned notices. The said ad-interim order has been in operation since then. As facts and issues are interconnected and similar, hence this common order.

3. Respondents 1 and 2 through the Tehsildar has resisted the same by an affidavit dated 10th June, 2005. The basic notices dated 11.10.2004 issued by the Government of India, Ministry of Commerce and Industry (Enforcement Division), Chennai have been placed on the record to support their action of recovery of the said penalty from the defaulting company/M/s.Kunal

Engineering Company Limited, Chennai (the company) and/or its proprietor/partners and directors mentioned in the said notices. Those noticees are the petitioners in question.

4. In view of the order dated 20th January, 2006 the petitioners have amended the petition and challenged the said individual notices dated 11.10.2004 issued by the added respondent no.3, who was an Adjudicating Authority under the Foreign Trade Act, on whose behalf, respondent no.2 has issued the impugned notice dated 15th March, 2005. Respondent no.3 has also filed an affidavit on 10th August, 2006 in opposition.

5. The petitioner, in Writ Petition Nos.191/2006 and 1635/2005, who was at the relevant time, the Chairman of the Hindustan Spinning and Weaving Mills, by virtue of his professional standing was invited to join the Board of Directors of the company, having its office at Ambattur, Chennai. He joined the Board of Director of the said company on 16th August, 1984 and continued till June, 1994 only, as he resigned from the said company. The petitioner, at the relevant time, did not associate with the day to day business of the said company.

6. The petitioner in Writ Petition Nos.1823/2005 and 1858/2005 as averred was an Executive Director of the

Hindustan Spinning and Weaving Mills when he was invited to the Board of Director of the company. He joined the said company on 1st August, 1994 and continued till 26th February, 1999. He resigned from the said company with effect from 26th February, 1999 and the said resignation was accepted on 23rd March, 1999. During the tenure as a Director he was never associated with the day to day business of the company.

7. The petitioner in Writ Petition No.1540/2005 was appointed as nominee Director to the Board of the company nominated by ICICI Bank. On his retirement as the nominee Director, the petitioner was offered by the company to be an additional Director and he joined accordingly on 3rd July, 1989. He resigned from the said post of additional Director on 20th June, 1997.

8. By an order dated 9th April, 2001 the Madras High Court appointed an Official Liquidator and liquidation proceedings commenced against the said company. As per the affidavit of respondent no.3 a notice dated 12.11.2001 was issued against the company/firm to show cause as to why an action should not be initiated for enforcing the conditions of the bond and licence for import as per the provisions of Section 11(1) and 11(2) of the Foreign Trade Act. An opportunity was given to appear in person on 28.11.2001 but no-one appeared.

Therefore, the case was adjudicated vide Adjudication Order dated 28.6.2004 and penalty was imposed accordingly. As the penalty was not paid, an order dated 9th December, 2004 was issued to recover the said amount.

9. It was further averred by respondent no.3 that as the show cause notice issued to the company was not answered, individual show cause notices were also sent subsequently. The petitioners have specifically averred that they never received any such notices or any notices of personal hearing and, therefore, the demand based on the basic notice dated 11.10.2004 issued by respondent no.3 is against the principles of natural justice, fair play. Respondent no.3 in affidavit averred only, that the notices were "sent to them in person". There is nothing stated further that all those notices were duly received by the respective petitioners, as the Director of the company or in any other capacity. The fact of resignation as a Director or in other capacity with effect from 1994, 1997 as mentioned above, just cannot be overlooked. The show cause notice as referred above was admittedly issued on 12.11.2001 much after their respective resignations. The petitioners are denying the receipt of the said notices. Admittedly, as per the affidavit, no hearing of any kind was given to the individual petitioners and/or such other Directors

and/or officer of the company. However, by the basic notice, the demands have been raised against the petitioners treating them as Director and/or Executive Officers of the company.

10. How the figures were arrived at, of the respective penalty imposed against the individual petitioner, is also vague. The demand notice by respondent no.2's officer is quite vague. The whole action of respondents in totality is against the principles of natural justice and fair play and, therefore, need to be interfered with, without going further into the merits of the matter. We are not concerned or making any observation on the merit of the demand as contemplated under the Foreign Trade Act. The demand of penalty has been in breach of principles of natural justice. No opportunity was given to the petitioners to justify their case and/or defence and/or liability. The submission of alternative remedy of appeal in the facts and circumstances of the case, no way assist the respondents to maintain their demand as the orders passed in breach of principles of natural justice and fair play are null and void. The respondents if advised are free to issue fresh and/or appropriate notices and pass orders after giving full opportunity to the petitioners.

11. Another aspect of the matter which must be noted is

that the order was passed against the company as can be seen from order dated 11th October, 2004 of the Government of India, Ministry of Commerce and Industry. The amount was claimed as penalty imposed under sub-section (2) of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992. As the amount was not deposited, recovery was sought to be made under sub-section (4) of Section 11 of the Foreign Trade (Development & Regulation) Act, 1992. That amount was to be recovered from M/s.Kunal Engineering Company Limited. There was also another order of 11th October, 2004 directing recovery from the firm and/or its proprietor/proprietors/partners/Directors as amended. For the first time, the names of the petitioners were shown as Directors. This was an order by the Foreign Trade Development Officer, whereas the earlier order of 11th October, 2004 was by the Joint Director of Foreign Trade. This subsequent order was basically to the District Collectors for recovery. Pursuant to that the Recovery Officer, Mumbai City issued notices to the petitioners under clause 267 of sub-rule 41 of the Maharashtra Land Revenue Act. The petitioners replied to the same pointing out that they were not liable. It is in these circumstances that these present petitions came to be filed. Respondents have not pointed out anything before us to show that there was any order for recovery under the provisions of the Foreign Trade

(Development & Regulation) Act, 1992 against the petitioners herein. The basic demand order was against the company. The respondents to demand any amount and such penalty from the petitioners herein was therefore incorrect.

12. It may also be noted that the company is under liquidation. An Official Liquidator has been appointed by the High Court of Madras on 9th April, 2001. If the company is in liquidation, prima facie the dues of the respondents will have to be filed before the Official Liquidator for claim against the assets of the company.

13. Having said so, the demand as presently made by the respondents to the petitioners in various petitions is clearly without authority of law. However, at the same time, in the absence of any document before us if the petitioners have stood as guarantors and/or as directors pursuant to the provisions of the Act and the Rules, they are liable for the dues of the company, then it will be respondents to issue fresh notices to the petitioners and the present order will not stand in the way of the respondents apart from what we have stated in para 10 of the order.

14. Taking the above facts into account, the impugned notices dated 11.10.2004 issued by respondent no.3 and

the notice dated 15.3.2005 issued by respondents 1 and 2 are quashed and set aside with liberty to the respondents to issue fresh notices of penalty and to take such action as contemplated under the relevant law,

by giving opportunity to the petitioners.

15. All these petitions are disposed of accordingly.

No costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)